

### **REMARKS**

This is a full and timely response to the outstanding final Office Action mailed December 10, 2008. Through this response, claims 1, 3, 5, 7-9, 12, 13, 15-19, 21-25 have been amended, claims 3, 4, 6, 10, 11, 14, 20, and 26-40 have been cancelled without prejudice, waiver, or disclaimer, and claims 41-55 are newly added. It is respectfully submitted that no new matter has been added. Reconsideration and allowance of the application and pending claims are respectfully requested.

#### **I. Claim Rejections - 35 U.S.C. § 102(b)/103a**

##### **A. Statement of the Rejection**

Claims 14, 16, 18, 33, and 35 have been rejected under 35 U.S.C. § 102(b) as allegedly anticipated by *Frost et al.* (“*Frost*,” U.S. Pub. No. 2002/0039483).

Claims 15, 17, 34, and 36 have been rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over *Frost* in view of *Boston et al.* (“*Boston*,” U.S. Pub. No. 2007/0286581).

Claims 1-3, 5, 7-9, 23-25, and 39 have been rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over *Frost* in view of *Masukura et al.* (“*Masukura*,” U.S. Pub. No. 2003/0001964).

Claims 10-13, 19-22, 30-32, 37, and 38 have been rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over *Frost* in view of *Kaars* (U.S. Pub. No. 2003/0066084).

Claim 40 has been rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over *Frost* in view of *Kaars* in further view of *Masukura*.

Applicants respectfully submit that these rejections have been rendered moot. Reconsideration and allowance of the presently pending claims is respectfully requested.

## **B. Discussion of the Rejection**

It is respectfully submitted that the art of record fails to disclose, teach, or suggest at least *“determining whether the video stream is to be transcoded according to a first operating mode or a second operating mode relative to producing the video stream, the determination based on availability of processing resources; and transcoding the video stream according to either the first operating mode or the second operating mode responsive to a determination regarding the sufficiency of processing resources, wherein the first operating mode is implemented in non-real time and the second operating mode is implemented in real-time”* as recited in amended independent claim 1, and *“determine logic configured to determine whether the video stream is to be transcoded according to a first operating mode or a second operating mode relative to producing the video stream, the determination based on availability of processing resources; and transcode logic configured to transcode the video stream according to either the first operating mode or the second operating mode responsive to a determination regarding the sufficiency of processing resources,”* as recited in independent claim 23.

For instance, *Frost* provides at paragraph [0021] as follows:

Further compression of data after compression of the original recording of data on the HDD is potentially very effective because most broadcast channels are real-time compressed, which does not give as good results as non-real-time compression, such as that used in DVD players. Even statistical multiplexers (e.g. Reflex) do not react quickly, meaning that there is still some redundancy in the data. Significant amounts of disk storage space can be made available quickly using a customised compression algorithm, suited to the application of television programme data, such as compress the start and end credits of a program first because this is likely to be highly compressible and is less noticeable to the user. Extra service information in the data streams recorded on the HDD can provide pointers to the receiver for the best places in the data to compress first. Alternatively the bitrate of the recorded data stream can be analysed to find where the latency of the statistical multiplexer can cause most data redundancy. The compression can be done in stages, so the oldest programmes are gradually compressed more and more.

Accordingly, it appears that *Frost* does not contemplate a dual mode operation, but rather, a single operating mode, assuming *arguendo* non-real time operation, and urges against real-time operation, in contrast to the claims.

Further, *Boston* does not remedy the deficiencies of *Frost*, in that there is no decision or dual mode operation capability (*e.g.*, in both real time and non-real time).

With regard to *Masukura*, emphasis is also apparently on a single mode (*e.g.*, see paragraphs [0046], [0063-0064], [0086]).

Finally, *Kaars* is clearly, not dual mode operation (see, *e.g.*, paragraphs [0021], [0027]).

For at least this reason, Applicants respectfully submit that claims 1 and 23 are allowable, and their respective dependents are allowable as a matter of law.

**CONCLUSION**

Applicants respectfully submit that Applicants' pending claims are in condition for allowance. Any other statements in the Office Action that are not explicitly addressed herein are not intended to be admitted. In addition, any and all findings of inherency are traversed as not having been shown to be necessarily present. Furthermore, any and all findings of well-known art and official notice, and similarly interpreted statements, should not be considered well known since the Office Action does not include specific factual findings predicated on sound technical and scientific reasoning to support such conclusions. Favorable reconsideration and allowance of the present application and all pending claims are hereby courteously requested. If, in the opinion of the Examiner, a telephonic conference would expedite the examination of this matter, the Examiner is invited to call the undersigned attorney.

Respectfully submitted,

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